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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: SGA - 176907

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on September 22, 2016, under Wis. Stat. §48.623(5)(a), to review a decision by the La Crosse County Department of Human Services regarding SGA, a hearing was held on November 1, 2016, by telephone.

The issue for determination is whether the county erred in its denial of the petitioner request for a subsidized guardianship.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, WI 53703

By: [REDACTED]  
La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Rock County.
2. Petitioner sought guardianship of her grandson.

3. On June 2, 2016 a Petition for Appointment of Guardian was filed in LaCrosse County case number 16-JG-8. Box 11 on that petition, which indicates that the county has determined that subsidy payments may be appropriate, is NOT checked.
4. Petitioner informed Lacrosse County that she wished to pursue a subsidized guardianship by e-mail dated June 14, 2016. By reply e-mail, [REDACTED] at LaCrosse County stated that this was “not an option for you at this time.”
5. The circuit court in LaCrosse County ordered a permanent guardianship on August 12, 2016 appointing petitioner as guardian of her grandson. This was not a subsidized guardianship.
6. On September 22, 2016, petitioner filed with DHA a document styled “Request for reconsideration of subsidized guardianship.”

### DISCUSSION

Initially, I note that it is not clear what negative action is being appealed, or whether there are appeal rights at all. The county arguably denied the June 14 request by e-mail to seek the SG. But, an appeal from that pseudo-action would also be arguably untimely. Since that time, there has been no specific “denial” that would form the basis of an appeal. I am not sure that DHA has jurisdiction over any issue. However, even if there is a ripe appeal before DHA, there is nothing that FDHA can do to effect a resolution.

A subsidized guardianship is a placement option for children who need to be placed outside of their parental homes. The program was established under the mandate of Wis. Stat., §48.623. The statute reads in pertinent part:

(1) A guardian of a child under s. 48.977(2) or under a substantially similar tribal law is eligible for monthly subsidized guardianship payments under this subsection if the county department or, in a county having a population of 750,000 or more, the department determines that all of the following apply:

(a) The child meets all of the following conditions:

1. The child has been removed from his or her home under a voluntary agreement under s. 48.63 or under a substantially similar tribal law or under a court order containing a finding that continued placement of the child in his or her home would be contrary to the welfare of the child.
2. The child has been residing in the home of the guardian for not less than 6 consecutive months.
3. The child's situation precludes return of the child to his or her home or adoption as appropriate permanency options for the child.
4. The child demonstrates a strong attachment to the guardian.
5. If the child is 14 years of age or over, the child has been consulted with regarding the guardianship arrangement....

(c) An order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 placing the child, or continuing the placement of the child, outside of the child's home has been terminated, or any proceeding in which the child has been adjudged to be in need of protection or services specified in s. 48.977(2)(a) has been dismissed, as provided in s. 48.977(3r).

(d) If the county department or department knows or has reason to know that the child is an Indian child, the Indian child's parent, Indian custodian, and tribe have been provided with notice of the child's placement in the home of the guardian under s. 48.977 (4)(c)2m. and the court has found under s. 48.977(4)(g)4. that the home of the guardian is in compliance with the order of placement preference under s. 48.028(7)(b) or, if applicable, s. 48.028(7)(c), unless the court found good cause, as described in s. 48.028(7)(e), for departing from that order.

Wis. Stat., §48.623(1); subsection (b) describes the guardian's qualifications, and in this case those qualifications are not an issue. Subsection (2) requires a written subsidized guardianship agreement. Under Wis. Stat. § 48.977(3r)(a) "Subsidized guardianship payments under s. 48.623 (1) may not be made to a guardian of a child unless a subsidized guardianship agreement under s. 48.623 (2) is entered into before the guardianship order is granted...." In this case, the guardianship order was issued by the circuit court without any request to the court of a subsidized guardianship.

Petitioner testified that she was assisted by multiple county social workers in her effort to ensure that her grandson was not placed in foster care after being born to homeless parents. Petitioner explained that her social workers ultimately left their positions and there was inconsistency in the counseling and implementation of the issues related to guardianship and permanency plan. Petitioner stated that the county facilitated a guardianship, which was granted, before she knew that it was too late to apply for a subsidized guardianship.

I note from the e-mail exchange referenced above that [REDACTED] of the county indicated to petitioner that an SG was "not an option." I am not sure why based on the record. If [REDACTED] was simply refusing to pursue the SG, or believed that the petitioner could not be amended, then it is arguable that petitioner may have been misinformed or misled. I have no evidence on which to consider that, however. It may be that [REDACTED] was aware of some facts that simply disqualified petitioner. Her terse and ambiguous e-mail does not provide clarity.

While there may be some miscommunication or lack of appropriate collaboration between petitioner and the county prior to the guardianship order, I do not believe there is anything that an ALJ can do to resolve the issue. Under the law, the county's denial of a SG at this point is correct because it is now after the time of a guardianship order. It would behoove the petitioner to seek a remedy from the circuit court that issued the guardianship order. That court may have the authority and discretion and inclination to convert the existing guardianship to a SG. I have no idea if that is possible and I cannot make it happen. But, any argument that the circuit court took an action without petitioner's consent, knowledge, or having appropriate opportunity to be heard should properly be before that court, not DHA. As for the discrete issue before me, I am not persuaded that any county denial of the SG at this point is an error of any sort.

### **CONCLUSIONS OF LAW**

The county did not err in denying a request for a subsidized guardianship as the permanent guardianship is already in place.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 9th day of January, 2017

\s\_\_\_\_\_  
John P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 9, 2017.

La Crosse County Department of Human Services  
Subsidized Guardianship Assistance - DCF